

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

*Plaintiffs designates, Orange  
County as the place of trial*

TOWN OF WARWICK, and TOWN OF WARWICK  
BUILDING and ZONING INSPECTOR,

Venue is based on  
plaintiffs residence

*Plaintiffs,*

*- against -*

BLACK BEAR CAMPGROUNDS,  
BLACK BEAR, HOWARD SMITH,  
JANE DOE and JOHN DOE,

*Defendants.*

**SUMMONS**

2008-009165

Index No. \_\_\_\_\_

**Assigned Judge:**

Hon. \_\_\_\_\_, J.S.C.

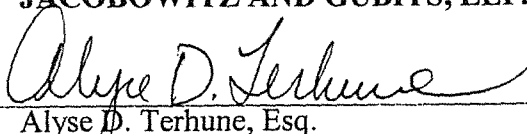
**TO THE ABOVE NAMED DEFENDANT(S):**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Walden, New York  
August 22, 2008

**JACOBOWITZ AND GUBITS, LLP.**

BY:



Alyse D. Terhune, Esq.  
*Attorneys for the Plaintiffs*  
158 Orange Avenue - P.O. Box 367  
Walden, New York 12586-0367  
(845) 778-2121

TO: Black Bear  
197 Wheeler Road  
Florida, NY 10921  
and/or  
310 Thomas Street  
Hurley, NY 12443

Black Bear Campground  
197 Wheeler Road  
Florida, NY 10921  
and/or  
310 Thomas Street  
Hurley, NY 12443

Howard Smith  
207 Wheeler Road  
Florida, NY 10921  
and/or  
310 Thomas Street  
Hurley, NY 12443

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
TOWN OF WARWICK, and TOWN OF WARWICK  
BUILDING and ZONING INSPECTOR

Plaintiffs,

-against-

BLACK BEAR CAMPGROUND,  
BLACK BEAR, HOWARD SMITH,  
JANE DOE and JOHN DOE.

VERIFIED COMPLAINT

Index No. ~~2008~~ - 009165

Assigned Judge:

Defendants.

\_\_\_\_\_, J.S.C.

-----X  
Plaintiffs Town of Warwick and Town of Warwick Building and Zoning Inspector, by their attorneys, Jacobowitz and Gubits, LLP, as and for their Complaint, respectfully shows the Court:

**JURISDICTION AND VENUE**

1. This is an action to enjoin unlawful campground uses that are not authorized by the approved site plan of the defendants, including Black Bear Campground (the "Campground"), in the Town of Warwick. The action seeks to compel the Campground to comply with the Town's zoning requirements and the existing site plan approval.

2. The action is within the jurisdiction of the Court pursuant to the CPLR.

3. The property is located in and the events giving rise to this action arose in Orange County. The case is properly venued in the Supreme Court, Orange County.

**PROPERTY**

4. Black Bear Campground and/or Black Bear is a campground situated on 56± acres located at 197 Wheeler Road, Town of Warwick, County of Orange, State of New York, identified on the Tax Maps as Section 8, Block 2, Lot 27.13 and Section 8, Block 2, Lot 27.14.

**PARTIES**

5. Defendants Black Bear Campground and/or Black Bear is an entity owning the Campground.

6. Defendant Howard Smith is an owner of, or has an ownership interest in, the Campground.

7. Defendants Jane Doe and/or John Doe are others having any interest in the

Campground. These persons, if any, are unknown to the Town.

8. Plaintiff Town of Warwick is a municipal corporation of New York, having the jurisdiction and authority to enforce the zoning, building, fire, and safety codes of the State and the Town.

9. Plaintiff Town of Warwick Building and Zoning Inspector is the duly appointed Building and Zoning Inspector of the Town, who is qualified and authorized to enforce the zoning, building, fire and safety codes of the State and the Town.

### **FACTS**

10. On April 12, 1965, the Town of Warwick Planning Board granted approval to the Campground to operate a maximum of seventy five (75) campsites on the Campground.

11. Thereafter the Orange County Department of Health approved the operation of seventy four (74) campsites at the Campground.

12. On December 30, 1980, the Town of Warwick Planning Board granted site plan approval to the Campground, which was limited to a maximum seventy-four (74) campsites.

13. This site plan approval was for the 74 campsites, use and construction of toilets, a pavilion, ballfields, shuffle board court, miniature golf course, a swimming pool and a store and office, subject to these facilities being used only by campers and their guests and further conditioned on compliance with Orange County Department of Health regulations.

14. Defendants have received no further site plan approvals from the Planning Board to expand the campground to more than 74 camp sites or construct or install any other camping facilities, dwellings or infrastructure.

15. Defendants have not applied for nor received a variance from the Zoning Board of Appeals to expand the campground to more than 74 camp sites.

16. Therefore, the defendants are permitted to operate the Campground only so long as such use complies with the 1980 site plan approving a maximum of 74 campsites and so long as the Campground comply with all Orange County Department of Health sanitary regulations.

**A. Defendants unlawfully increased the number of camp sites from 74 to between 140 and 160+ in violation of the approved site plan and without approval from the Town**

17. Defendants have increased the number of campsites on the Campground to between one hundred and forty (140) and one hundred and sixty (160) or more.

18. The degree of violation is unclear because defendants unlawfully expanded the Campground without applying to the Town Planning Board for a site plan amendment, thus the Town can no longer determine where the permitted 74 camping sites are located, where new sites are located and where individual sanitary facilities are located.

19. The unlawful additions include structures which appear to be small cabins, constructed without building permits or oversight by the Town Building Department, and being occupied without certificates of occupancy.

20. The Campground's website advertising states that the Campground operates year-round and also advertizes "Rental Cabin RV's", which include a bathroom with full-bath sized stall shower and kitchenette area, color tv, heater and air conditioner, and front porch. The Campground's website photos show constructed cabins. No building permits for such cabins have been issued.

21. Although the exact degree of unlawfulness cannot be determined, there is no question that the Campground violates the site plan approved.

22. State, County and Town safety, sanitary and zoning codes are being violated.

23. In addition, the Town seeks an order to compel defendants to map and identify the 74 approved camp sites and all appurtenant facilities which have been approved by the Town. All camp sites (and appurtenances) in excess of, or in differing locations from, those shown on the 1980 approved site plan are unlawful and must be removed.

**B. The Black Bear Campgrounds violates the Town of Warwick Zoning Law's prohibition against operating seasonal camping facilities year-round and requirement to obtain a special use permit**

24. The Campground is subject to the provisions of the Town Zoning Code regulating campgrounds.

25. The Campground is located in the R-U (Rural) zoning district, which allows cabins,

camping grounds for recreational vehicles, camping and travel trailer camps pursuant to a special permit issued by the Town of Warwick Planning Board.

26. The Town of Warwick Zoning Law §164-22 defines a “Camp” as:

Any area of land or water on which are located two or more cabins, tents, travel or camping trailers, shelters, houseboats or other accommodations of a design or character suitable for seasonal or other more or less *temporary* living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise [emphasis added].

27. The Town of Warwick Zoning Law Section 164-49.2(A) and (V) state respectively:

Campgrounds are a special permit use consisting of a tract of land designed *exclusively for overnight and short-duration* vacation camping, providing facilities for tents, camp trailers, motor homes, recreational activities, administration, public health and safety [emphasis added].

[All campgrounds] must close annually from December 15 to March 15. Any habitable structures or vehicles, other than those of the owner/caretaker, must be locked and made unavailable for occupancy during that time period. Furthermore, occupancy by an individual or group of individuals in any form of permitted temporary, movable or portable shelter shall be for a period of *not longer than 120 days in any twelve-month period* [emphasis added].

28. The Town of Warwick Zoning Law clearly authorizes seasonal campgrounds only, and prohibits *de facto* residential neighborhoods of mobile camping trailers, tents and/or cabins.

29. The Campground’s website advertizes year-round use at the Campground. The website advertizes rates for January 1, 2008 - December 31, 2008.

30. The website also advertizes that the Campground facilities are designed for people who “are on a temporary assignment in the area”. On information and belief, workers who constructed the Millennium Pipeline in the area live there.

31. The Campground thus violates the zoning code requirements that prohibit use between December 15 and March 15, and limit use to exclusively overnight and short-duration vacation camping.

32. The defendants operate the Campground year round, in contravention of the plain

language of the Zoning Code, and specifically in violation of Sections 164-49.2(A) and (V) above.

33. In addition, Town of Warwick Law §164-49.2(Z) states:

Each permit for a campground shall be valid for a period of 12 months from the date of use. Prior to the issuance of a renewal permit, the Building Inspector shall inspect the campground premises for compliance with all [applicable] regulations.

34. The defendants have neither applied for nor received annual renewals of a special permit to operate the Campground, in violation of Section 164-49.2(Z).

35. The Town of Warwick Zoning Law §164-22 defines a “Camp Ground” as:

A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of tents, motor homes, travel or camping trailers, *none of which may exceed 40 feet in length* [emphasis added].

36. Upon information and belief, defendants allow trailers of 40 feet or greater to be located on the Campground, in violation of the permitted “Camp Ground” use.

37. Defendants transformed a campground approved for seasonal recreational use into a year-round residential community by locating permanent structures on the grounds, including wooden cabins, mobile homes on concrete blocks, campers with adjacent permanent wooden recreational decks without Town Planning Board or Building Department oversight, in violation of Town of Warwick Zoning Law.

38. Defendants must be permanently enjoined from operating the Campgrounds between December 15 and March 15.

39. All permanent structures on the Campgrounds violate Town Zoning Law and must be removed.

40. All trailers in the Campground exceeding of 40 feet must be removed.

**C. Defendants have failed to remedy zoning violations noticed by the Town**

41. Defendants have received numerous Notices of Code Violations and Orders to Remedy from the Town of Warwick, including violations for noncompliance with the 1980 site plan, increasing the number of camp sites without Planning Board and/or Zoning Board of Appeals approval, unsafe conditions on the site, unapproved and leaking individual septic systems,

violations of the electrical code, permanent placement of non-mobile trailers on the property, trailers in excess of 40 feet in length, unsafe trailers, and adding septic connections without approval.

42. Defendants continue to violate Town Zoning Law by unlawfully increasing the number of camp sites beyond the number approved in 1980, by keeping non-mobile trailers on the property, by keeping one or more trailers in excess of 40 feet in length on the property, by installing unapproved individual septic barrels on the property and adding septic connections without approval.

43. Defendants have failed to remedy certain Town Zoning Law violations.

**D. Non-compliance with the Orange County Board of Health sanitary regulations**

44. Defendants have received numerous Violations Notices from the Orange County Department of Health, including, among others, modifying the well water source disinfectant system without approval, non-functioning chlorination equipment, uncovered trash dumpsters, unapproved barrel septic systems, and perforated septic drums.

45. The 1980 site plan approval granted by the Planning Board requires the Campground to comply with Orange County Department of Health regulations. Section 164-49.2(H)(10) of the Town Zoning Code requires campgrounds to comply with Orange County Department of Health regulations and approvals.

46. The Campground does not comply with County Department regulations and approvals.

47. Defendants must file a certified site plan showing the exact location of individual septic systems so that Town officials may inspect said systems and determine compliance.

48. Defendants must comply with all applicable County health and safety laws.

**AS AND FOR A FIRST CAUSE OF ACTION**

49. Defendants violate the Town of Warwick Zoning Code because the Campground is being operated and enlarged in contravention of the 1980 approved site plan.

**AS AND FOR A SECOND CAUSE OF ACTION**

50. Defendants' failure to seek special permit approval or site plan approval to enlarge the Campground violates Town of Warwick Zoning Law.

**AS AND FOR A THIRD CAUSE OF ACTION**

51. Defendants' failure to apply for annual renewal of a special permit to operate the Campground violates Town of Warwick Zoning Law.

**AS AND FOR A FOURTH CAUSE OF ACTION**

52. Defendants' operation of the Campground between December 15 and March 15 violates Town of Warwick Zoning Law.

**AS AND FOR A FIFTH CAUSE OF ACTION**

53. Defendants' construction and use of permanent structures, campers with adjacent permanent wood and recreation decks, and trailers in excess of 40 feet violate the Town of Warwick Zoning Law.

**AS AND FOR A SIXTH CAUSE OF ACTION**

54. Defendants' non-compliance with County Health Department regulations and approvals violates the 1980 site plan approval and the Town of Warwick Zoning Law.

**AS AND FOR A SIXTH CAUSE OF ACTION**

55. Defendants are in not compliance with Town building, fire and safety codes.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

56. Defendants are not in compliance with County Health laws, rules, and regulations.

**WHEREFORE**, the plaintiff respectfully requests that the Court make and enter an Order:

a. That defendants be permanently enjoined from operating the Campground in contravention of the 1980 approved site plan, which approval authorized defendants to operate seventy-four (74) campsites only.

b. That defendants be enjoined from operating or occupying the Campground after December 15, 2008.

c. That defendants be ordered to submit, on or before February 15, 2009, a Campground plan certified by a qualified professional, showing the exact location of the approved seventy-four (74) sites and the approved pavilion, ballfields, shuffle board court, miniature golf course, swimming pool, store and office, and appurtenances.

d. That defendants be ordered to submit, on or before February 15, 2009, a certified plan showing all water sources and sanitary facilities, including but not limited to those



used by the camp sites and common facilities, prepared and signed by a professional engineer licensed by the State of New York.

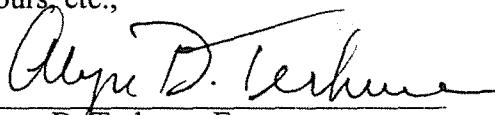
e. That defendants be ordered to demonstrate, on or before February 15, 2009, that the water sources and sanitary facilities are approved by the Orange County Department of Health and/or any agency having jurisdiction.

f. That defendants be enjoined from reopening the Campgrounds unless the requirements of paragraph a through e are complied with.

g. For such other and further relief as may be just and equitable, together with the costs and disbursements of this action.

Dated: Walden, New York  
August 22, 2008

Yours, etc.,

  
Alyse D. Terhune, Esq.  
Jacobowitz & Gubits, LLP  
*Attorneys for Plaintiff*  
158 Orange Avenue  
Walden, New York 12586  
(845) 778-2121

TO: Black Bear  
197 Wheeler Road  
Florida, NY 10921  
and/or  
310 Thomas Street  
Hurley, NY 12443

Black Bear Campgrounds  
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Howard Smith  
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**VERIFICATION**

STATE OF NEW YORK     )  
                                      :  
COUNTY OF ORANGE    )     ss.:

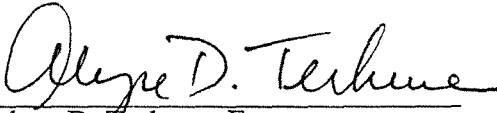
I, the undersigned, am an attorney admitted to practice in the courts of New York State, and say that:

I am the attorney of record, or of counsel with the attorney(s) of record, for plaintiffs. I have read the annexed Verified Complaint, know the contents thereof and, based on information and belief, the same are true to my knowledge. My information and belief is based upon documents and information from clients.

I make this affirmation pursuant to *CPLR 3020(d)(3)*.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: August 22, 2008

  
Alyse D. Terhune, Esq.

SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. ELAINE SLOBOD, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X

TOWN OF WARWICK, and TOWN OF WARWICK  
BUILDING AND ZONING INSPECTOR,

Plaintiffs,  
-against-

BLACK BEAR CAMPGROUNDS, BLACK BEAR,  
HOWARD SMITH, JANE DOE and JOHN DOE,

To commence the statutory time  
period for appeals as of right  
(CPLR 5513 [a]), you are  
advised to serve a copy of this  
order, with notice of entry,  
upon all parties.

Defendants.

Index No. 9165/2008

Motion Date: June 2, 2009

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The following papers numbered 1 to 8 were read on this motion by  
plaintiffs for a preliminary injunction:

Order to Show Cause-Affirmation-Affidavit-Summons-Complaint-  
Exhibits.....1-6  
Answer.....7  
Affirmation in Opposition.....8

Upon the foregoing papers it is ORDERED that that branch of the  
motion which sought injunctive relief closing the defendant  
Campgrounds from December 15, 2008 to March 15, 2009 is denied as  
moot.

That branch of the instant motion which seeks injunctive relief  
requiring defendants to comply with the approved site plan allowing  
seventy-four campsites at the subject Campgrounds located at 197  
Wheeler Road, Town of Warwick is granted. Defendants' only argument  
in opposition to this branch of the motion is that plaintiffs have  
not demonstrated that they would suffer injury were the relief to be  
denied. Town Law § 268, however, affords plaintiffs access to the  
courts for relief to enforce a Town Zoning Code. The Town of Warwick  
Zoning Code limits the density of campgrounds as prescribed by the

Planning Board. Accordingly, this branch of the motion is granted.

This matter is scheduled for preliminary conference on June 22, 2009 at 9:15a.m. at the Orange County Government Center, 255-285 Main Street, Goshen, New York.

The foregoing constitutes the decision and order of the court.

Dated: June 9, 2009  
Goshen, New York

E N T E R

Elaine Slobod  
HON. ELAINE SLOBOD, J.S.C.

TO: JACOBOWITZ & GUBITS  
Attorneys for Plaintiffs  
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